

Original Proffer \_\_\_\_\_  
Amended Proffer   
(Amendment # 1 to ZMA 94-06)

**PROFFER FORM FOR FONTANA PHASE 4C**

Date: July 30, 2007

ZMA # 04-18

Tax Map and Parcel Number Tax Map 78E, Parcel A

17.15 Acres to be rezoned from R1, R4, RA to R4

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the property, if rezoned. These conditions are proffered as a part of the requested rezoning and it is agreed that such conditions are reasonable.

1. **Conformity with Plans:** Fontana Phase 4C will be developed in general accord with the plans entitled, "Fontana - Phase 4C Rezoning Plan," prepared by Terra Engineering and Land Solutions, dated, 2007, a copy of which is attached hereto as Exhibit A, (the "Plan"). No more than thirty-four (34) dwelling units shall be developed in Fontana Phase 4C.
2. **Final Grading Plan:** The Owner shall submit a final grading plan meeting the requirements of this section (hereinafter, the "Final Grading Plan") with the application for each subdivision of the residential units shown on the Plan identified in Proffer 1 above. The Final Grading Plan shall show existing and proposed topographic features to be considered in the development of the proposed subdivision. The Final Grading Plan shall be approved by the County Engineer prior to the approval of the first preliminary subdivision plat. The subdivision shall be graded as shown on the approved Final Grading Plan. No certificate of occupancy shall be issued for any dwelling on a lot where the County Engineer has determined the lot is not graded consistent with the approved Final Grading Plan. The Final Grading Plan shall satisfy the following:
  - A. The Final Grading Plan shall show all proposed streets, building sites, surface drainage, driveways, trails, and other features the County Engineer determines are needed to verify that the Plan satisfies the requirements of this proffer.
  - B. The Final Grading Plan shall be drawn to scale not greater than one (1) inch equals fifty (50) feet.
  - C. All proposed grading shall be shown at contour intervals not greater than two (2) feet.

- D. All concentrated surface drainages over lots shall be clearly shown with the proposed grading. All proposed grading shall be shown to assure that surface drainage can provide adequate relief from flooding of dwellings in the event a storm sewer fails. Graded slopes on lots proposed to be planted with turf grasses (lawns) shall not exceed a gradient of three (3) feet horizontal distance for each one (1) foot of vertical rise or fall (3:1). Steeper slopes shall be vegetated with low maintenance vegetation as determined to be appropriate by the County's program authority in its approval of an erosion and sediment control plan for the land disturbing activity. These steeper slopes shall not exceed a gradient of two (2) feet of horizontal distance for each one (1) foot of vertical rise or fall (2:1), unless the County Engineer finds that the grading recommendations for steeper slopes have adequately addressed the impacts.
- E. Surface drainage from one-half (1/2) acre of land or from three (3) or more, whichever is greater in area, shall be collected in a storm sewer or directed to a drainage way outside of the lots.
- F. All drainage from streets shall be carried across lots in a storm sewer to a point beyond the rear of the building site.
- G. The Final Grading Plan shall demonstrate that an area at least ten (10) feet in width, or to the lot line if the distance is less than ten (10) feet, from the portion of the structure facing the street has grades no steeper than ten (10) percent adjacent to possible entrances that will not be served by a stairway. This graded area also shall extend from the entrances to the driveways or walkways connecting the dwelling to the street.
- H. Any requirement of this condition may be waived by the County Engineer by submitting a waiver request with the preliminary plat. If such a request is made, it shall include: (i) a justification for the request contained in a certified engineer's report; (ii) a vicinity map showing a larger street network at a scale no smaller than one (1) inch equals six hundred (600) feet; (iii) a conceptual plan at a scale no smaller than one (1) inch equals two hundred (200) feet showing surveyed boundaries of the property; (iv) topography of the property at five (5) foot intervals for the property being subdivided and on abutting lands to a distance of five hundred (500) feet from the boundary line or a lesser distance determined to be sufficient by the agent; (v) the locations of streams, stream buffers, steep slopes, floodplains, known wetlands; and (vi) the proposed layout of streets and lots, unit types, uses, and location of parking, as applicable. In reviewing a waiver request, the County Engineer shall consider whether the alternative proposed by the Owner satisfies the purpose of the requirement to be waived to at least an equivalent degree. In approving a waiver, the County Engineer shall find that requiring compliance with the requirement of this condition would not forward the purposes of the County's Subdivision and Water Protection Ordinances or otherwise serve the public interest, and granting the waiver would

not be detrimental to the public health, safety or welfare, to the orderly development of the Project, and to the land adjacent thereto.

I. The Owner may request that the Plan be amended at any time. All amendments shall be subject to the review and approval by the County Engineer.

3. **Affordable Housing:** The Owner shall make a contribution of \$71,625 (equivalent to \$19,100 cash in lieu of three and three-quarters [3.75] affordable dwelling units), or \$2106.62 per unit to the County for the purpose of affordable housing. Each cash contribution shall be due and payable with each application for a building permit. Each cash contribution shall be used for the purpose of funding affordable housing programs in Albemarle County. If this cash contribution has not been exhausted by the County for the stated purpose within five (5) years from the date of the last payment of the contribution, all unexpended funds shall be applied to any public use within Neighborhood 3.

4. **Trees:** At least one hundred-fifty (150) trees shall be planted or retained on the subdivided lots. Trees shall be distributed among all lots with a minimum of 5 trees per lot. The five trees to be counted on each lot shall be marked in the field for inspection purposes. The owner shall not request a certificate of occupancy until a final zoning inspection is performed and all required trees are in place.

**Standard for trees to be retained:** Deciduous trees to be retained shall be at least a 1 ½ inch caliper d.b.h. and non-deciduous trees shall be at least four (4) feet in height. All trees to be retained shall be identified on erosion and sediment control plans, final grading plans, and road plans. A tree conservation plan in accordance with Section 32.7.9.4. of the Zoning Ordinance shall be submitted and approved prior to approval of any erosion and sediment control permit for grading.

**Standards for trees to be planted:** All trees shall be planted in accordance with either the standardized landscape specifications jointly adopted by the Virginia Nurserymen's Association, the Virginia Society of Landscape Designers and the Virginia Chapter of the American Society of Landscape Architects, or the road and bridge specifications of the Virginia Department of Transportation. At planting, deciduous trees shall be at least a 1 ½ inches in caliper d.b.h.; non-deciduous trees shall be at least four (4) feet in height.

5. **Cash proffer:** After applying the nine "by-right" Lots, the Owner shall contribute \$437,500 [34 minus 9 = 25 x \$17,500], or \$12,867.65 cash to the County for each unit constructed within the Property for the purpose of mitigating impacts from the development. Each cash contribution shall be used for improvements for schools, libraries, public safety, parks and transportation as identified in the County's Capital Improvements Program. The cash contribution shall be paid in increments of \$12,867.65 cash for each unit prior to or at the time of issuance of a building permit for each unit. If this cash contribution has not been exhausted by the County for the stated purpose within five (5) years from the date of the last payment of the contribution, all unexpended funds shall be applied to any public use within Neighborhood 3.

- 6. **Annual Adjustment of Cash Proffers:** Beginning January 1, 2009, the amount of each cash contribution required in Proffers 3 and 5 shall be adjusted annually until paid, to reflect any increase or decrease for the preceding calendar year in the Marshall and Swift Building Cost Index (the "MSI"). In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by these proffers. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the MSI as of December 1 in the year preceding the calendar year most recently ended, and the denominator of which shall be the MSI as of December 1 in the preceding calendar year. For each cash contribution that is being paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year.
  
- 7. **Final Approval:** The Owner shall not submit an application for an erosion and sediment control permit for grading until improvements have been completed for phases 1, 2, 3, and 4A and 4B of the Fontana Subdivision and all bonds held by the County in conjunction with subdivision, stormwater management, and erosion control for prior phases have been released by the County.
  
- 8. **Architectural Standards:** The Owner shall require as part of the covenants for Fontana Phase 4C that all structures be constructed using medium shaded earth-tone colors for façade treatment of the buildings and dark, non-reflective materials for roofs. The colors for the façade treatments and the colors and materials for the roofs shall be subject to prior approval by the Director of Planning.

A. M. Nichols  
Signature of Owner

A. M. Nichols, Trustee  
Fontana Land Trust

7/30/07  
Date

12:35 pm